SPEECH

OF

HENRY CHAMPION DEMING,

OF CONNECTICUT,

ON THE

President's Plan

FOR

STATE RENOVATION,

DELIVERED FEBRUARY 27TH, 1864.

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HENRY CHAMPION DEMING,

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DELIVERED IN THE HOUSE OF REPRESENTATIVES,

FIRST SESSION, THIRTY-EIGHTH CONGRESS,

FEBRUARY 27, 1864.

The HOUSE being in Committee of the Whole on the State of the Union, MR. DEMING rose and said—

Mr. CHAIRMAN, I was induced to seek the floor when the House was last in Committee upon the present subject, because the two speeches to which I had listened upon the President's message paid but a passing glance to what is to me its most important and most memorable feature; I mean its plan of State renovation. As it is the first distinct intimation from an authoritative source that the war is not to be everlasting, and that States may yet be restored, and that the rebuilding of our dilapidated temple may yet be commenced, it deserves to be received with fuller ceremonies and with ampler honors. It is at least refreshing to those who have feared that between State secession on the one hand, and State annihilation on the other, the Federal system would be ground to atoms, and not even territorial unity saved from the general wreck.

In surveying the insurgent States we see at a glance that the elements which may create and inspire a new national life, and those which may corrupt and destroy it, are now both floundering together in the great vortex of civil war, and that, unless this "tumult and confusion all embroiled" is to last for ever, these elements must be summoned to separate and recombine according to their respective natures, and assert their appropriate functions, and work out energetically their inheriting affinities of life unto life and death unto death. If the neutralizing of the elements of order was the only evil of this unnatural combina-

tion, it would most pathetically appeal to all that can be done by executive interposition for its correction. But when we consider that by a stern implication of law, according to its authoritative expounders, all distinction between guilt and innocence in the insurgent States is also confounded, and that the loyal within the limits of this Civil War are subjected to the same pains, penalties and forfeitures with the disloyal, a case so pitiable is stated that it should appeal to heaven and earth for relief.

It is to this precise anomaly that the President's plan addresses itself. It seeks to liberate order from this inert and paralyzing combination, to exempt innocence from being confounded with guilt, to separate loyalty from that unwholesome contact which attaches to it the contagion, and subjects it, in the eye of the law, to the punishments of crime.

The task essayed is one of infinite difficulties and embarrassments, and no plan of restoration devised by finite wisdom could approximate toward completeness at the outset, because the facts upon which it should be based are to a great extent prospective, and because it must constantly modify and change itself according to new developments as it advances into the future. The President, therefore, has wisely abstained from proposing anything but a transitional plan, adapted to the exigencies of the hour, and merely bridging the chasm between State anarchy and State restoration. It professes on its face to be temporary only, and not final or unchangeable; contenting itself with commencing the great deliverance, and by the necessities of the case restricting itself to such initiatory modes and such tentative processes for renovating the insurgent States as our present imperfect knowledge of their condition and limited control over them permits him to employ.

In attempting to solve this most perplexing of political problems at the present stage of its evolution, no statesman who relies upon merely human observation and forethought could have adopted any different method. If you demand just now and here a thorough and perfect code and science of reconstruction, you must go to those who enjoy special revelations and inspired prevision of the future. Mere men must grope their way when dealing with what is beyond

the limits of their knowledge, and it is by experimental processes alone that the race has succeeded in reaching the certainties of science and in triumphing over the obstacles and mysteries which have beset it from infancy.

While, therefore, in my judgment, the President's plan is not beyond cavil, it is as complete and comprehensive as the intricacies of the subject and its present development will permit, and it possesses also the rare merit of being just to the Government, just to the insurgent States, and just to the slave; and it is to these three characteristics that I propose to restrict my remarks at present.

1. It is just to the Government.

It surrenders no power or jurisdiction which the Government has ever claimed; it maintains every law which Congress has passed during the Civil War; it abandons no executive measure which the exigencies of that war has evoked; it yields to armed enemies none of their insolent demands, and to cold friends none of their temporizing expedients. If the insurgent States return upon this plan, they will return acknowledging all the claims of the Government which they made the pretext of revolt, and abjuring the claims which they propounded as their ultimatum of peace. They will return not only repudiating the glosses which, for more than thirty years, they have attempted to foist upon the Constitution, but also their darling policy of extending and propagating slavery, to which, for a longer period, they have attempted to make it subservient. They will return swearing allegiance to an organic law which has clarified itself by blood of all taint and stench of secession, and which has demonstrated its self-existence by nearly devouring one half of its assumed creators. They will find that the fire which has swept over this District has not only burnt off slavery, but exterminated the root and seed of it in the soil itself, and that since their Hegira from this Hall, the question upon which their Pryors, their Keitts, their Cobbs and Barksdales have so often convulsed it has been definitely settled, and that freedom is now securely seated upon our immeasurable Territories for the illimitable future, and that the influence of despised New England has planted the seed of free republics as near the setting sun as she is herself to his rising beams, so that when her choral hymn of rejoicing

liberty sweeps over the Father of Waters, it can be caught up by younger voices and pealed in one continuous and unbroken strain until it is lost in the deep-toned anthem of the vast, peaceful sea. They will find that their old feudal Bastile, strong and impregnable though it once seemed, has been undermined by our armies, and blown up and scattered into fragments by those of their own kin who preferred the destruction of slavery to the death of the nation. They will find that military necessities, which they themselves created, have placed Springfield rifles into the hands of slaves, from which the same necessities had previously struck off the fetters, and that a hundred thousand of these once groveling bondsmen, marshalled into the armies of the Union and trained in military skill and discipline, now defiantly hold the acres over which they were once tracked by bloodhounds, and domineer the plantations where they once toiled under the lash of the overseer. They will return finally with wonderfully increased respect for Uncle Sam, bowing obsequiously to him, as a respectable living thing, self-sustained, and not sustained by their sufferance, with a power and will of his own, and breath in his nostrils not breathed into it by them, with a right hand strong enough to bruise and break, and with a face that will hereafter be a terror to all his enemies.

2. The President's plan is just to the insurgent States.

And first, are those excluded from amnesty and pardon justly and rightfully excluded? This question deserves no nicety of discussion, for upon it there can be but little honest difference of opinion. The main conditions which the President imposes upon those he restores to pardon are contained in an oath, and the virtue of an oath lies in its obligatory and binding force upon the conscience. He therefore justly excludes from pardon all who have demonstrated by manifest perjury their contempt of its obligations. The forsworn judges who have surrendered honor on our decorous bench for infamy on a judgment seat reared by Civil War, the forsworn officers, military and naval, who have prostituted to the rebellion the skill in arms which they acquired as wards and beneficiaries of the Government, are justly and righteously debarred from amnesty because they have not conscience or honor enough left to be grappled by an oath.

Crimes differ in degree; and the experience of mankind establishes that while some can be safely pardoned without detriment to the common weal, there are others which cannot go unpunished without its constant peril or its certain destruction. The high civil and diplomatic magnates of this most unprovoked rebellion, the military Molochs whose rank entitles them to guilty pre-eminence, are left to lie unshrived, unaneled, in the pit they have digged for themselves, because among the crimes pronounced inexpiable by the consenting voice of all the ages, is that of those arch-rebels and arch-traitors who instigate and lead a civil war, the sum and expressed essence of every crime. The society which tolerates such parricides cannot exist a moment in safety. Rome could enjoy no repose while Catiline lived. France was drenched in blood until Robespierre was guillotined. Davis will convulse Secessia as soon as he is not allowed to reign, and if its bonds had been worth stealing, Floyd would have robbed it before he died.

The miscreants who have violated the laws of war, and ostracized themselves from human sympathy by murdering and torturing disarmed and helpless prisoners of war, are justly left to work out their own damnation; and why? Because to forgive a Thug who maims and murders in the name of chivalry would be an outrage upon civilization.

Secondly. Are the terms imposed upon those included in the amnesty just and right?

What are these terms? There are five of them: 1. An oath to sustain the Constitution. 2. An oath to sustain the Anti-Slavery legislation. 3. An oath to sustain the President's proclamation. 4. Slave property is withheld in general restitution. 5. Property, where the rights of third parties have intervened, is also withheld.

The committee will observe that the first three of these conditions are in the form of an oath. Now, I agree mainly with my friend from Kentucky, [Mr. YEAMAN,] who has spoken upon this question, when he says that great quarrels are settled by the fortunes of war and by the domination of great ideas and principles, rather than by the formality of taking oaths and recording them; and that restoration is attained when the ideas and the forces of the nation have prevailed over the ideas and the forces of secession and

national disintegration. It appears to me, however, that this is an explanation of the method by which social laws and influences, rather than political agencies, may reunite a divided society. The ideas and forces of which he speaks are embodied in human beings who, at the present stage of of our advance, must continue to be governed and directed by political administration and its appropriate machinery. Sociology must wait for many decades before its sublime speculations can be applied to practical affairs. In political parlance, the elements which he represents as struggling for preponderance are loyalty and disloyalty. An oath of allegiance may not be an infallible mode of discriminating between those who will faithfully and sincerely support a Government and those who will desert and betray it; but who can at present propound a better test? I can conceive of a stage in our future culmination when all the masks, disguises, and hypocrisies of mankind will be stripped off, and their most interior motions and impulses stand revealed. I can imagine that the inhabitants of earth may yet become as perfect as the inhabitants of the higher spheres, who, according to clairvoyant philosophers, are incapable of deceit and cannot speak at all without speaking the truth. But in the nineteenth century, and with our present imperfect means of penetrating men's real purposes, we must rely upon the old-fashioned oath of allegiance as the best criterion of their rectitude or want of it. It is the test which has been used in Government since the morning stars sang together; it was used in the construction of our present system, and must be used in the reconstruction if we are to commence the work of renovation by separating the true from the false, the loyal from the disloyal, the wheat from the tares.

It is objected to this plan that it pardons the rebel on condition of his doing a certain thing, and requires the loyal man to do the same thing before he can participate in a State government. The Supreme Court of the United States has unanimously decided that from the 13th day of July, 1861, the date of the approval of the non-intercourse act, there has been between the Government and the confederate States a civil territorial war; and it is laid down as a principle in the same momentous decision that "the laws of war, whether the war be civil or *inter gentes*, convert every citizen of a

hostile State into a public enemy and treat him accordingly. From the outbreak of this rebellion to the present hour, on the Non-Intercourse Act, on the Confiscation Act, on the Conscription Act, on every vigorous and earnest measure of legislation the gentlemen on the other side of the House have importunately invoked the Constitution and the laws, and here they have them, in full measure and running over; law certain, but law inexorable, as it was in Shylock's case; law not according to the Solicitor of the War Department, but law according to the supreme arbiter of mooted constitutional questions. Since the adoption of the Constitution the court has devoted itself almost exclusively to the study and interpretation of its *peace* side, and out of it they have extracted power and authority enough for all the emergencies of peace and for all the operations and enterprises of a tranquil society. When the judges shall have given to its *war* side one tithe of the attention and study which they have given to its peace side, they will discover power enough for all the emergencies of war; power enough for self-defense, whether the Government it organizes is attacked in the guise of secession or of revolution; power enough to inflict full and exemplary punishment upon all who assail it, whether they are seceders, rebels, traitors, or public enemies. The decision in the prize cases is the first fruit of these new studies, covering by its vast sweep all the war legislation that has been so severely criticised and so savagely rebuked. Before the 13th of July it might or might not have been, according to the judges, a *personal* war. Before that time it might or might not have been that the only enemy the Government could recognize was the *person* engaged in the rebellion, as the opponents of the Administration have clamorously asserted, and that all others were peaceful citizens, entitled to all the rights and privileges of citizenship under the Constitution. But since the Non-Intercourse Act no such claim can be made, for the point is authoritatively settled by the agreement of all the judges that from that time the *personal* war became a *civil territorial war*, giving to the United States *full* belligerent rights against *all* the inhabitants of the rebellious districts, and converting them all, in the eye of the law, into public enemies.

It does not by any means follow that because the rebels

have forfeited all constitutional rights and constitutional guarantees, *they have thereby absolved themselves from constitutional obligation.* They are "none the less *enemies* because they are traitors," says Judge Grier; and he might have said that they have not ceased to be *traitors* because they are *enemies.* In other words, the President may *elect* to pursue them either as enemies or traitors, by the Constitution or by the laws of war. If he elects to pursue them as traitors, he must pursue them in accordance with the constitutional definition of treason and by the mode and with the limitation it clearly indicates in the section devoted to that crime. If he elects to pursue them as enemies, there is no limit and restraint upon his discretion but the laws of war. The Duke of Cumberland, when in 1745 he subdued the Scotch rebels, could have tried them all at a drum-head court-martial, or handed them over to the civil tribunals to be tried according to the laws of England defining treason.

Here, then, you have it. It is "so nominated in the bond," that within that boundary "marked by a line of bayonets," every citizen, whatever his conduct, whether Union or rebel, loyal or disloyal, is a public enemy, and liable to be treated as such. Now, is it not rather too late in the day to declare that all within that line do not need pardon before they can be restored to the rights of citizenship which they have forfeited as public enemies? It is not, as has been stated by some, a "superfluous boon" which the President tenders to the loyal man, nor has he adroitly blended together the conditions of pardon with qualifications for citizenship. It was with a full knowledge and understanding of the effect and operation of this decision in the prize cases, and from his conviction that a man who had never swerved from his allegiance might be caught in the meshes of this legal implication that induced the President to disregard the broad moral distinction between the two classes, and to extend his clemency to all who in legal contemplation were public enemies. In the very opening sentence of his proclamation he offers it to all who have "directly or *by implication*" participated in the rebellion.

Let me now for a moment examine more in detail the terms of the President's plan. In the first place he requires that all who accept his clemency shall swear "to henceforth faith-

fully support, protect, and defend the Constitution of the United States, and the Union thereunder." That this is a just and righteous demand from all who have "directly or by implication" participated in the rebellion, the most scrupulous and tender-hearted apologist for our "wayward sisters" will hardly venture to deny.

In the second place he requires from them an oath to abide by and support all the Anti-Slavery legislation of Congress during the existing rebellion, so long and so far as it is not abrogated by the national Legislature nor declared void by a decision of the Supreme Court. Now, inasmuch as by the Constitution itself, the Constitution and the laws made in pursuance of it are declared to be the supreme law of the land, there is no great hardship in requiring both from the loyal and the disloyal inhabitants of the insurgent States an oath to support the supreme law of the land, so long as it continues to be valid and unrevoked.

In the third place the President requires from the recipient of executive clemency an oath to sustain the proclamation emancipating slaves, so long and so far as it is not invalidated by supreme judicial decision. Whether the Proclamations were constitutional or not is not here the question, for this is waived by the essential qualification of the oath, and left where it must eventually go, to our supreme judicial tribunal. If the Proclamation is pronounced by the judges unconstitutional, the oath is void; if constitutional, it merely binds the conscience of the affirmant to sustain the Executive of the United States, in a time of grievous national peril, in the exercise of his legitimate powers.

In the fourth place the President's plan withholds slaves in the general restitution.

And it is upon this point that in my judgment the most serious differences of opinion will arise. To those who hold that rebels who abjure the Constitution and wage war for its destruction are entitled to all the rights which it guaranties, and can only be pursued by constitutional penalties, both the emancipation of slaves and the refusal to restore them will seem the greatest of enormities. To those who hold that the inhabitants of the insurgent States have forfeited all their rights under the Constitution, and are public enemies in a state of war, with no rights but such as the law of nations

accords to belligerents, the condition now under consideration will be regarded only as the infliction of just and merited punishment.

Round these conflicting theories, from the firing upon Sumter to the present hour, proposition and reply, assertion and rejoinder, have raged and stormed as when—

> "From peak to peak, the rattling crags among,
> Leaps the live thunder."

It seems to me, however, as I have already stated, that the Supreme Court of the United States has closed the high debate and pronounced judgment to which we are all bound deferentially to bow. The judges have unanimously agreed in affirming that a civil war between the Government and the confederate States has existed for two years and a half, and that a civil war carries with it all the legal consequences of war. Now, what are these legal consequences? They are gathered together from Vattel, Phillimore, and Wheaton, and compendiously summed up in the opinion of Justice Nelson, in the prize cases, 2 Black, 687:

"The legal consequences resulting from a state of war between two countries at this day are well understood, and will be found described in every approved work on the subject of international law. *The people of the two countries become immediately the enemies of each other*—all intercourse, commercial or otherwise, between them unlawful—all contracts existing at the commencement of the war suspended, and all made during its existence utterly void. The insurance of enemies' property, the drawing of bills of exchange or purchase on the enemies' country, the remission of bills or money to it are illegal and void. Existing partnerships between citizens or subjects of the two countries are dissolved, and, in fine, interdiction of trade and interconrse, direct or indirect, is absolute and complete by the mere force and effect of war itself. *All the property of the people of the two countries on land or sea are subject to capture and confiscation by the adverse party as enemies' property*, with certian qualifications as it respects property on land, (Brown *vs.* United States, 8 Cranch 110,) all treaties between the belligerent parties are annulled. The ports of the respective countries may be blockaded, and letters of marque and reprisal granted as rights of war, and the law of prizes as defined by the law of nations comes into full and complete operation, resulting from maritime captures, *jure belli*. War also effects a change in the mutual relations of all States or countries, not directly, as in the case of the belligerents, but immediately and indirectly, though they take no part in the contest, but remain neutral.

"This great and pervading change in the existing condition of a country, and in the relations of all her citizens or subjects, external and internal, from a state of peace, is the immediate effect and result of a state of war."

If this be so, if, in the language of the court, "all the property of the people of the two countries, on land and sea, are subject to confiscation and capture by the adverse party, as enemy's property," I do not see how the conclusion can

be evaded that the slave property of the insurgent States was lawful spoil and prey of war, and that the President, as Commander-in-chief and sole judge of military necessities, was authorized in taking the services of the slaves from their masters, in the only efficacious way it could be done, by an edict of emancipation. He found back of the heavy legions of armed rebels, back of the bayonets and artillery which, at Corinth, at Murfreesboro', at Richmond, were aimed at the nation's life, back of Lee and Jackson and Beauregard and Bragg and the whole multitudinous host, four million men pressed into the hated and loathsome business of feeding, clothing, and sustaining their enemies and ours. He found in the slave the bone and sinew and muscle of the social state that was hurling upon us death and destruction, the body of the grim Colossus that was clutching the nation's throat, the forage, the subsistence, the transportation, the labor, the architect, the operative, the intrenching tool of the foe. To the slave it was due that a remorseless conscription could skin the land of white men, and drive all, from the "whining school-boy" to the "lean and slippered pantaloon," into the fighting ranks of the rebellion. And must the Commander-in-chief of the Federal Army withhold his hand from this immense arsenal of strength and power and victory? What! not break the bone, not sever the sinew, not rend the muscle, not seize the subsistence, the wealth, the material, not tear out the heart of the rebellion, when they were all at his mercy by the laws of war? What folly, what imbecility, what treachery to the people, what perfidy to the Government, would such a refusal imply! Military necessity! Why, at the time of the proclamation we were reeling and staggering under well-delivered and repeated blows. The elections were against us. The public sentiment of the world was cold and menacing. England stood ready to avenge the defeats and jealousies of a century by pouncing upon us in our weakness, and an alliance with the Confederacy was a part of Napoleon's plan of transatlantic aggrandizement. Name the nation that was ever more severely pressed at home and abroad; name the instance in the tide of time where such a necessity was more paramount, when a measure was more unavoidable to save a realm from everlasting overthrow, on the one hand, and upon the other to secure for it

a glory unsurpassed, a progress without end, a triumph of humanity, such as was never seen before.

Fortunately for the country, fortunately for the world, the President was equal to the emergency; he did not refuse; he manumitted the slaves; and in doing this but followed the example of those master States who make the laws of war and give them authority. England has by three of her military commanders turned this formidable engine against us as an unquestioned martial right. France has freely distributed rescripts not only of emancipation but of enfranchisement, and Spain has added the weight of her authority to the same rule. When in the South American republics hostile factions have dashed together, they have had no scruple in liberating slaves as a legitimate mode of crippling an antagonist; and it will be hard to find a modern war carried on in territories of slavery in which emancipation has not been used as a legitimate belligerent right, and used without protest. As property, it was the duty of the President to confiscate them by the only effectual mode; as persons in duress, unwillingly contributing to the strength and resources of the enemy, it was his duty to break up the duress by the only effectual mode; as loyal subjects panting to rush to the defense of their imperiled country, it was his duty to remove all restraint from the free exercise of their volition by the only effectual mode; as disloyal subjects rendering voluntary service to their masters, it was his duty to take that service by the only effectual mode.

3. Just to the slave.

Shall these once slaves but now freemen be remanded back to bondage? No: "personal property once forfeited is always forfeited." No: slaves once legally free are always free. No, no; thrice no, by the ashes of our fathers, by the altar of our God! The "chosen curses," and the "hidden thunder in the stores of heaven" will forbid the rendition: a crime to them, a malediction to their masters, a shame to us, and a disgrace to the age. If these children of wrong and oppression are the lawful spoil of our victorious arms, give up to the enemy your proudest national memorials—the sword of Washington, the staff of Franklin, that time-worn but immortal parchment which first authoritatively published your independence to the world—give up to him

the blood-stained flags and trophies which, upon the bristling crest of battle, our heroic defenders have wrenched from his desperate grasp; give up to him this Capitol itself, and throw at his feet the President's head, before you give up the most abject of these bondsmen disinthralled; for in surrendering them you will squander one of those priceless moments, big with the future, worth more than a whole generation of either bond or free, the rare and pregnant occasion placed in your hand by the fortune of war of wiping forever African slavery from the American continent.

If this deliverance is ever vouchsafed, then shall we be purged for ever of the sole source of our weakness and dissension in the past; then will pass away for ever the sole cloud that threatens the glory of our future; then will the American Union be transfigured into a more erect and shining presence, and tread with firm footsteps a loftier plane, and cherish nobler theories, and carry its head nearer the stars; then will it be no profanation to wed its redeemed and unpolluted name to that of immortal Liberty; then Liberty *and* Union will go on, hand in hand, and, under a holier inspiration and with more benign and blessed auspices, will revive their grand mission of peacefully acquiring and peacefully incorporating contiguous territories, and peacefully assimilating their inhabitants; then from the Orient to the Occident, from the flowery shores of the great southern Gulf to the frozen barriers of the great northern Bay, will they unite in spreading a civilization, not intertwined with slavery, but purged of its contamination, a civilization which means universal emancipation, universal enfranchisement, universal brotherhood; then shall we have done for the United States what Richelieu is said to have done for France:

> "He found France rent asunder,"
> * * * * * *
> "Brawls festering to rebellion, and weak laws
> Rotting away with rust in antique sheaths.
> He re-created France; and from the ashes
> Of the old feudal and decrepit carcass,
> *Civilization*, on her luminous wings,
> Soared, Phœnix-like, to Jove."

Despair not, then, soldiers, statesmen, citizens, women, who are fighting energetically for a nation's life. The cloud which now shuts down before your vision will yet disclose

its silver lining. Peace shall be born from war, and out of chaos order shall yet emerge. We shall dwell together in harmony, and but one nation shall inhabit our sea-girt borders. We seem sailing along the land, hearing the ripple that breaks upon the shore, where our recreated and regenerated Republic, after it has passed through this fiery furnace of war, these gates of death, shall be permanently installed. We shall yet tread its meadows and pastures green, trade in its marts, live in its palaces, worship in its temples, and legislate in its Capitol. The providence of God moves through great cycles of time. If we could only attain a point in the future that commands a sufficiently comprehensive retrospect, all the mysteries of our historic evolution would unfold their meaning. We should learn why our journey to this "more perfect Union" was so long and wearisome; why the morn was so long in breaking; why diverse races were at the outset planted on this continent; why we struggled through Indian, Spanish, French, and English wars to political independence; why just as the new-born nation was "hardening into the bone of manhood" it was suffered to divide itself into hostile armies, that have crossed each other's track, and intersected and rushed and crashed together, as the planets would, if the forces which hold them in their orbits were once suspended; why religion and knowledge and law were too feeble to bind together repelant societies; why bigotry and intolerance were but half-crucified in our best men; why slavery was ever generated; why it did not die in the womb, and why it so long impeded the march of the American people to national unity and domestic tranquility.

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